



0000150682

BEFORE THE ARIZONA CORPORATION

RECEIVED

ORIGINAL**COMMISSIONERS**

2014 JAN - 1 P 1:03

Arizona Corporation Commission

DOCKETED

JAN 07 2014

DOCKETED BY

BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

IN THE MATTER OF THE APPLICATION) DOCKET NO. W-20589A-08-0173
 OF RIDGELINE WATER COMPANY,)
 L.L.C. FOR A CERTIFICATE OF) MOTION FOR FURTHER
 CONVENIENCE AND NECESSITY FOR) EXTENSION OF COMPLIANCE
 WATER SERVICE.) FILING DEADLINE DATE

I.**INTRODUCTION**

Pursuant to A.A.C. R14-3-106, Ridgeline Water Company, L.L.C. ("Company") submits this Motion for Further Extension of Compliance Filing Deadline Date ("Motion") within which to file an Approval to Construct ("ATC") for the water system facilities needed to serve Ridgeline Estates ("Ridgeline"). In support of its Motion, the Company submits the following information.

II.**DISCUSSION**

As background to the compliance filing deadline extension request which is the subject of this Motion, attached hereto as Appendix "A" and incorporated herein by this reference is a copy of the Commission's Decision No. 73225, in which the Commission granted an extension to the Company to satisfy the one (1) remaining compliance condition from the Commission's Decision No. 73225. As noted in Decision No. 73225, the four (4) other compliance conditions set forth in Decision No. 70748 have been

1 satisfied.¹

2 As indicated in Finding of Fact No. 4 in Decision No. 73225, the 2008 financial
3 crisis and subsequent recession severely impacted the real estate market and
4 homebuilding industry in Arizona, and affected the timeline for development of new
5 residential communities such as Ridgeline. While the situation for those sectors of the
6 economy in Arizona since then has improved significantly in the Phoenix metropolitan
7 area, and to a lesser extent in the Tucson metropolitan area, the situation has not
8 materially improved in rural areas of the state (such as Ridgeline) during the
9 approximately nineteen (19) months since Decision No. 73225 was issued. Thus, for the
10 Developer (Pollux Properties, L.L.C.) of Ridgeline, due to circumstances beyond its
11 control, it has not been economically feasible to date to commence construction of the
12 water system facilities here in question.

13 However, during that intervening time period, the Company and the Developer of
14 Ridgeline have successfully concluded discussions with the Arizona State Land
15 Department for a second right-of-way for the Ridgeline residential community. In
16 addition, as further evidence of its commitment to the project, the Developer also
17 previously spent in excess of \$240,000 for the drilling and equipping of two (2) wells,
18 which will provide the potable water supply for Ridgeline, and on other activities and
19 commitments related to the provision of water service.

20
21
22
23
24
25
26
27
28

¹ See Finding of Fact No. 6 in Decision No. 73225 at page 3, lines 2-14.

III.

CONCLUSION

WHEREFORE, based on the preceding discussion, the Company respectfully requests that the Commission issue an appropriate form of order extending the deadline for filing the ATC for construction of the water system facilities for Ridgeline from February 12, 2014 to February 12, 2017.²

Dated this 7th of January 2014.

Respectfully submitted,

Lawrence V. Robertson, Jr.

Lawrence V. Robertson, Jr.
Attorney for Ridgeline Water Company,
L.L.C.

The original and thirteen (13) copies of the foregoing Motion will be filed this 7th day of January 2014 to:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

A copy of the foregoing Motion will be emailed or mailed this same date to:

Lyn A. Farmer,
Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission

² Even though Ridgeline will have only 132 custom home lots, which is modest when compared with other single family residential communities, the commencement of construction of the water distribution facilities necessary to serve those lots still will be governed by prevailing market conditions and economic feasibility. Thus, while it is hoped that the further extension herein requested will prove to be more than adequate for the intended purpose, it should be noted that neither the Company nor the Developer are in a position at this time to guarantee that will in fact prove to be the case.

LAWRENCE V. ROBERTSON, JR.
ATTORNEY AT LAW
P. O. Box 1448
Tubac, Arizona 85646

1 1200 West Washington Street
Phoenix, Arizona 85007

2
3 Steve Olea, Director
Utilities Division
4 Arizona Corporation Commission
1200 West Washington Street
5 Phoenix, Arizona 85007

6
7 Janice M. Alward, Chief Counsel
Legal Division
8 Arizona Corporation Commission
1200 West Washington Street
9 Phoenix, Arizona 85007

10 Brian Bozzo, Manager
11 Compliance & Enforcement Section
Utilities Division
12 Arizona Corporation Commission
1200 West Washington Street
13 Phoenix, Arizona 85007

14
15 Ridgeline Water Company LLC
2509 N. Campbell Ave # 427
16 Tucson, AZ 85719

17 Pollux Properties, L.L.C.
18 6141 North Pomona Road
Tucson, Arizona 85704

19
20 
21

Appendix “A”

**January 7, 2014
Ridgeline Water Company
Motion for Further Extension
Docket No. W-20589A-08-0173**



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

Arizona Corporation Commission

DOCKETED

JUN - 5 2012

DOCKETED BY

TJM

IN THE MATTER OF THE APPLICATION OF
RIDGELINE WATER COMPANY, L.L.C. FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY FOR WATER SERVICE.

DOCKET NO. W-20589A-08-0173

DECISION NO. 73225

ORDER EXTENDING TIME
DEADLINE CONTAINED IN
DECISION NO. 70748

Open Meeting
May 22 and 23, 2012
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. In Decision No. 70748 (February 12, 2009) the Commission granted an Order Preliminary to the issuance of a Certificate of Convenience and Necessity ("CC&N") to Ridgeline Water Company, L.L.C. ("Ridgeline" or "Company") for authorization to provide water service to Ridgeline Estates. This development will consist of 136 single family homes on four-to-five acre lots, located near Madera Canyon, south of Tucson in Pima County. The developer of the project is Pollux Properties, L.L.C. ("Pollux"), which formed the Company to provide water to Ridgeline Estates.¹

2. Pursuant to the Order Preliminary, Ridgeline is required to comply with five conditions within three years of the effective date of the Decision before the Company may request the Commission to issue a CC&N.² Specifically, the Company has to file: 1) a public utility license

¹ Decision No. 70748, page 3.

² In its Motion for Extension of Compliance Filing Date Deadline, Ridgeline states that under the Order Preliminary it was required to comply with six conditions precedent to the issuance of a CC&N. However, the sixth condition noted by the Company (relating to best management practices) was not a condition precedent for the issuance of the CC&N.

1 agreement from Pima County; 2) documents related to Pollux's financial structure; 3) a curtailment
2 tariff; 4) a backflow tariff; and 5) a copy of the Pima County Department of Environmental Quality
3 Approval to Construct ("ATC") for water system facilities needed to serve Ridgeline Estates.³ Based
4 on the effective date of the Decision, these five compliance items were due to be filed with the
5 Commission no later than February 12, 2012. The Decision also states that if Ridgeline fails to
6 comply with these terms, this Order Preliminary will be deemed null and void, and Staff must file a
7 memorandum to close the docket.⁴ The Decision further states that if the Company meets the Order
8 Preliminary conditions and the Commission issues a CC&N, there are additional compliance
9 requirements that must be met. Failure to meet these terms "will render the [CC&N] null and void,
10 after due process, unless the Commission grants an extension of time for compliance with those
11 requirements".⁵

12 3. On December 2, 2011, Ridgeline filed with the Commission a Motion for Extension of
13 Compliance Filing Deadline ("Motion") requesting an extension of time to file the ATC.

14 4. According to the Motion, the 2008 downturn of the real estate market negatively
15 affected the timing of Ridgeline Estates' development; nevertheless, Pollux has continued to move
16 forward with the project as best as it is able given the current economic environment. Ridgeline
17 notes that the Pollux has obtained the necessary easements for the placement of underground utility
18 facilities and has been working with the Arizona State Land Department to obtain the needed ingress
19 and egress easements.⁶ Attached to the Motion is a letter from Pollux supporting the Motion and
20 stating that it intends to complete the project and still desires that Ridgeline serve as the water utility
21 provider for the development.⁷ The Company notes that it has complied with four of the five
22 compliance conditions, leaving only the ATC filing outstanding.⁸

23 5. Accordingly, Ridgeline requests that the Commission grant its Motion and extend the
24 time for filing the required ATC for the water system facilities necessary to provide water service to
25

26 ³ Decision No 70748, pages 25-26.

27 ⁴ *Id.*, page 26.

28 ⁵ *Id.*, page 30.

⁶ Motion, pages 2-3.

⁷ Motion, Attachment A.

⁸ Motion, page 2.

1 Ridgeline Estates from February 12, 2012, to February 12, 2014.⁹

2 6. On April 10, 2012, the Commission's Utilities Division Staff ("Staff") filed a Staff
3 Report confirming that the Company has met the conditions of the Order Preliminary except for the
4 ATC filing requirement.

5 7. In the Staff Report, Staff stated, "[A]lthough extensions of time are not typical in
6 situations in which an Order Preliminary is granted by the Commission, Decision No. 70748 does not
7 specifically consider the possibility of an extension of time in this matter."¹⁰ Staff noted, however,
8 pursuant to the Decision, the Company's failure to comply with stated the terms and conditions of the
9 Decision would render the CC&N null and void unless an extension of time for compliance is
10 granted.¹¹ Based on the information provided by the Company, Staff recommended approval of
11 Ridgeline's Motion to extend the ATC filing deadline from February 12, 2012, to February 12, 2014.
12 Staff also recommended that no further compliance extensions should be granted.¹²

13 8. Under the terms of the Decision, Ridgeline's failure to file the ATC by February 12,
14 2012, would render the Order Preliminary null and void.¹³ The Decision does not contemplate an
15 extension of the Order Preliminary to the issuance of a CC&N, nor does it state that it cannot be
16 extended, although, as noted by Staff, extensions of time to comply with Order Preliminary
17 requirements are not typical.

18 9. We note that, in this instance, the circumstances impeding Pollux's ability to move
19 forward with the development, and therefore Ridgeline's ability to file the ATC, are out of the
20 entities' control. The Company has timely complied with four of the five conditions to the Order
21 Preliminary and the information provided by Ridgeline demonstrates that the developers are
22 continuing to move forward with Ridgeline Estates as best they are able in the current economic
23 climate. We note that there are no other water companies in Ridgeline Estates' vicinity that might
24 provide water service to the development,¹⁴ so there is no detriment to extending the Order

25 _____
26 ⁹ Motion, page 3.

27 ¹⁰ Staff Report, page 2.

28 ¹¹ This portion of the Decision applies once the Commission has issued the CC&N; not to the conditions precedent to the
issuance of the CC&N.

¹² Staff Report, page 2.

¹³ Decision No. 70748, page 26.

¹⁴ Decision No. 70748, page 3.

1 Preliminary at this time. However, we agree with Staff that there should be no further extensions of
2 the conditions to the Order Preliminary.

3 10. Given the circumstances, and based on the information provided by the Company, we
4 find that Staff's recommendations are reasonable and we adopt them.

5 **CONCLUSIONS OF LAW**

6 1. Ridgeline is a public service corporation within the meaning of Article XV of the
7 Arizona Constitution and A.R.S. §§40-281 and 40-282.

8 2. The Commission has jurisdiction over Ridgeline and the subject matter of the Motion
9 for extension for time to comply with Commission Decision No. 70748.

10 3. Staff's recommendations are reasonable and should be adopted.

11 ...

12 ...

13 ...

14 ...

15 ...

16 ...

17 ...

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

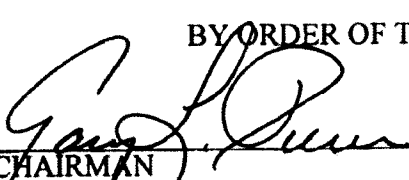
ORDER

IT IS THEREFORE ORDERED that Ridgeline Water Company, L.L.C.'s Motion for extension of time to comply with Decision No. 70748 is granted, extending the Order Preliminary to the issuance of a Certificate of Convenience and Necessity compliance deadline for filing the Pima County Department of Environmental Quality Approval to Construct to February 12, 2014.

IT IS FURTHER ORDERED that no further extensions of the conditions to the Order Preliminary to the issuance of a Certificate of Convenience and Necessity shall be granted, absent extraordinary circumstances.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


CHAIRMAN
EXCUSED
COMM. KENNEDY

EXCUSED
COMM. NEWMAN


COMMISSIONER

COMMISSIONER

COMMISSIONER


COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 5th day of June, 2012.


ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: RIDGELINE WATER COMPANY, L.L.C.

2 DOCKET NO.: W-20589A-08-0173

3

4 Lawrence V. Robertson, Jr.
5 ATTORNEY AT LAW
6 P. O. Box 1448
7 Tubac, AZ 85646

8 Janice Alward, Chief Counsel
9 Legal Division
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
12 Phoenix, AZ 85007

13 Steven M. Olea, Director
14 Utilities Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
17 Phoenix, AZ 85007

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34